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Insurance Corporation as Receiver for
Security Savings Bank

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FEDERAL DEPOSIT)	Case No. 2:13-cv-00168-JAD-GWF
INSURANCE CORPORATION)	
AS RECEIVER FOR SECURITY)	
SAVINGS BANK,)	
)	STIPULATED PROTECTIVE
Plaintiff,)	ORDER
)	
vs.)	
)	
KELLY JONES, STEPHEN)	
DERVENIS, and THOMAS)	
PROCOPIO,)	
)	
Defendants.)	

1 This Stipulated Protective Order ("SPO") is made by and
2 between the Federal Deposit Insurance Corporation as Receiver for
3 Security Savings Bank, Henderson, Nevada ("FDIC-R"), and the former
4 officers of Security Savings Bank listed on **Attachment A** hereto
5 ("Defendants"). The FDIC-R and the Defendants are referred to
6 individually as a "Party" or together as the "Parties."

7 **RECITALS**

8 1. On February 27, 2009, Security Savings Bank ("Bank" or
9 "SSB"), Henderson, Nevada was closed by the Nevada Department of
10 Business and Industry, Financial Institutions Division ("NFID") and the
11 FDIC was appointed as Receiver. At that time, the FDIC-R succeeded to all
12 the rights, titles, and privileges of the Bank and its depositors, account
13 holders, other creditors, and stockholders. 12 U.S.C. 1821(d)(2)(A)(i).

14 2. On January 31, 2013, the FDIC-R filed this action in the
15 United States District Court for the District of Nevada, Civil Action
16 Number 2:13-cv-00168-JAD-GWF (the "Action"), against the Defendants
17 seeking damages in excess of \$13 million related to seven loans (the "Loan
18 Transactions"), in which SSB purchased a participation interest.

19 3. The Defendants are insured under a Policy issued by
20 Travelers (the "Policy").

21 4. Prior to the commencement of this action, the FDIC-R and
22 Defendants entered into a Confidentiality and Non-Disclosure Agreement,
23 executed on various dates in April, 2012 ("Confidentiality Agreement").
24 This Order does not change or alter the Parties' Confidentiality Agreement;
25 provided, however, that any documents produced by the FDIC-R or
26 Defendants in this litigation after May 1, 2013, shall be subject to the terms
27 and conditions of this Order rather than the Confidentiality Agreement,
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1 even if such documents had been provided pursuant to the Confidentiality
2 Agreement.

3 AGREEMENT

4 1. **Purpose.** This Stipulated Protective Order is entered into
5 for the purpose of facilitating the exchange of confidential materials in
6 discovery and making other disclosures, either voluntary or as otherwise
7 required by the Federal Rules of Civil Procedure or the local rules of this
8 Court, while simultaneously maintaining the confidential nature of the
9 documents and information provided to them in connection with this
10 litigation. This SPO is necessary because some documents exchanged
11 hereunder contain information protected from disclosure by law, including
12 private and protected financial information about consumers (such as
13 protected by the Gramm-Leach-Bliley Act (Pub. L 106-102)), confidential
14 regulatory information, or commercially sensitive information, disclosure
15 of which could result in violation of law, or harm to individual consumers
16 or the Parties.

17 2. **Definition of Confidential Material.** For purposes of this
18 SPO, "Confidential Material" shall mean certain documents, records, and
19 information composed or stored in written, electronic, digital, or any other
20 medium, provided by any Party pursuant to this SPO, and to any
21 information identifying any names, addresses, account information,
22 personal information (such as social security number, date of birth, and
23 any other personal identification information) recognized by law as, or
24 required to be maintained as, confidential, including, without limitation,
25 the following:

26 (a) **Regulatory.** Confidential Material related in any
27 way to the regulation or supervision of the Bank, in whatever form,
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whether preliminary or final, including reports of examination or inspection, regulatory correspondence, reports, orders, memoranda, or agreements by, from or with the FDIC in its corporate capacity, the Nevada Department of Business and Industry, Division of Financial Institutions ("NFID"), the Federal Reserve Board ("FRB"), or any other federal or state regulatory authority, and any documents containing confidential information obtained from any documents and records related to the supervision or regulation of the Bank. The Parties understand and agree that the release of such regulatory information may require approval from independent government agencies, and that no regulatory documents, however obtained, will be disclosed to third parties not covered by this Confidentiality Order absent such authority's approval or an Order of the Court.

(b) **Statutory.** Confidential Material includes documents that are confidential pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), 12 C.F.R. § 309.5, the FDIC-R's regulations governing the disclosure of information, the laws of the State of Nevada, or any other applicable federal or state laws.

...

...

(c) **Bank and Bank Customers.** Confidential Material related to the Bank, its customers, any trading company involved in placing orders for commodities futures or options, or any other entity, including: Automated Clearing House items or transactions, chargebacks, merchant processing, bank account information, signature cards, bank statements, general ledger entries, deposit or reserve information, commodity trading statements, loans and lending transactions, loan

1 applications, financial statements and credit reports, business and personal
2 state and federal income tax forms, correspondence, and related loan
3 documentation relating to any extension of credit or loan to any borrower.
4 Examples of "Confidential Material," without limitation, include
5 documents containing a customer's account number, credit card number,
6 personal identification number, account balance, information relating to a
7 deposit account, loan, or borrower relationship and loan application
8 materials, and documents or information that contain the customer's name,
9 address, social security number, date of birth or other similar identifying
10 information.

11 (d) *Receivership.* Confidential Material related to the
12 receivership of the Bank, including any information on loss or estimates of
13 such loss on the Bank's assets not publicly available.

14 (e) *Trade Secret/Proprietary Information.* Documents
15 and information that the Defendants reasonably believe constitute, reflect,
16 or disclose trade secrets, proprietary data or commercially sensitive
17 information of the Defendants.

18 Notwithstanding the foregoing paragraphs (a) - (e), no Party is
19 estopped or in any way prevented from later challenging the
20 confidentiality designation of any document.

21 3. *Confidential Designation and Treatment of Confidential*
22 *Material.* Confidential Material to be produced by any Party to this
23 Agreement shall be designated by stamping them with the legend
24 "Confidential." The failure to designate any documents with such legend
25 shall not constitute a waiver by the producing Party of the right to assert
26 that such documents contain protected Confidential Material. In the event
27 that any Party inadvertently produces confidential documents or
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1 information without designating the documents or information as
2 Confidential Material, and if the producing Party subsequently notifies the
3 receiving Party and their counsel that the documents or information should
4 have been designated Confidential Material, the Parties agree to treat any
5 such subsequently identified documents or information as duly designated
6 Confidential Material and subject to this Agreement. Absent the
7 "Confidential" designation or the subsequent notification referenced above,
8 a receiving Party shall have no obligation to treat received material as
9 Confidential Material.

10 The Parties specifically reserve the right to disagree with and
11 contest any such designation of documents or information as Confidential
12 Material. In the event there is a dispute over whether a particular
13 document or set of documents is Confidential Material, the
14 receiving/objectioning Party may raise that issue with the Court and shall
15 maintain its copy(ies) of the challenged documents in confidence unless
16 and until a ruling is issued by the Court. To the extent that a Party's
17 confidential designation of any document or material is challenged, it shall
18 be the designating Party's burden to prove why such document or material
19 meets the definition of Confidential Material.

20 4. *Challenge of Confidentiality Designation.* A Party shall
21 not be obligated to challenge the propriety of a designation of
22 confidentiality at the time made, and a failure to do so shall not preclude a
23 subsequent challenge thereto. In the event that any Party disagrees at any
24 stage of these proceedings with the confidentiality designation by the
25 producing Party, the Parties shall first try to dispose of such dispute in
26 good faith on an informal basis. If after 15 days the dispute cannot be
27 resolved, the Party objecting to the designation may, at any time thereafter,
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1 seek appropriate relief from the Court in which this Action is pending. The
2 challenged designation shall be maintained and shall remain in full force
3 and effect pending the Court's determination on the challenged
4 designation.

5 5. ***Non-disclosure of Confidential Material.*** All
6 Confidential Material provided pursuant to this SPO is provided solely and
7 exclusively for purposes of litigating this Action. Absent further written
8 agreement between the Parties or further order of this Court, all such
9 materials shall be maintained confidential pursuant to this SPO and shall
10 not be disclosed, discussed, or in any way divulged to any person for any
11 other purpose, except as permitted under this SPO. Provided, however,
12 that the exchange of Confidential Material between the FDIC as Receiver
13 for the Bank ("FDIC-R") and the FDIC acting in any of its various other
14 capacities shall not constitute disclosure for purposes of this Order. Any
15 such Confidential Material transmitted among various capacities of the
16 FDIC shall remain subject to this Order and its prohibition on further
17 disclosure.

18 6. ***Exceptions to Non-Disclosure.*** The Parties agree that the
19 Confidential Material shall be used only to investigate, analyze, litigate,
20 and resolve this Action. The Parties may disclose Confidential Material
21 received pursuant to this SPO to the following persons or entities,
22 identified in paragraphs 7 and 8, below, provided that each person or
23 entity required to do so has complied with paragraph 9 below.

24 7. ***Exceptions to Non-disclosure: Defendants and Travelers.***
25 Upon Travelers' execution of the SPO in the form of Attachment C,
26 Travelers may receive Confidential Material produced by FDIC-R, and
27 subject to Paragraph 9 below, the Defendants and Travelers may disclose
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1 Confidential Material received pursuant to this SPO to the following
2 persons or entities:

3 (a) The Defendants and their counsel who have signed
4 this SPO;

5 (b) Travelers' outside counsel who signed this SPO and
6 Travelers personnel (including, but not limited to, its Board of Directors,
7 in-house attorneys, investigators, senior executives) conducting, assisting,
8 monitoring, reviewing, or making determinations with regard or related to
9 the Action;

10 (c) Outside counsel (together with any employees of
11 counsel), who have not otherwise signed this SPO, engaged by the
12 Defendants and/or Travelers to assist or participate in the above matters;

13 (d) Vendors, experts, consultants, mediators, and
14 arbitrators engaged by the Defendants and/or Travelers and/or their
15 respective counsel to assist or participate in the above matters;

16 (e) Reinsurers, auditors or other entities to which
17 Travelers may be required to respond or report in the ordinary course of
18 business regarding the subject matter of the Action, but only so long as
19 such persons or entities are already subject to substantially similar
20 confidentiality obligations;

21 (f) Regulators to which Travelers may be required to
22 respond or report in the ordinary course of business regarding the subject
23 matter of the Action;

24 (g) Court officials involved in this Action including
25 court reporters, certified translators or interpreters, and other Court
26 personnel as are necessarily incident to the conduct of discovery, the
27 preparation for the trial or the trial itself;
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1 (h) Other Bank officers, directors, employees,
2 independent contractors, or outside accountants or auditors who
3 performed work for the Bank; and

4 (i) Non-party witnesses who have executed
5 Attachment B, provided however, if in the course of deposition or trial
6 testimony of said witness the witness has declined to execute Attachment
7 B, the examination of said witness may proceed and the witness may be
8 shown Confidential Material, but the witness shall not be given a copy of
9 said material. Provided, however, that as to such deposition witnesses that
10 decline to execute Attachment B, any Confidential Material to be used as
11 exhibits shall be attached in a Confidential Appendix of exhibits, separate
12 from the balance of the exhibits.

13 8. *Exceptions to Non-disclosure: FDIC-R.* Notwithstanding
14 anything to the contrary herein, but subject to Paragraph 9 below, the
15 FDIC-R may disclose Confidential Material received pursuant to this SPO
16 to the following persons or entities:

17 (a) FDIC-R personnel (including, but not limited to, its
18 Chairman, Board of Directors, attorneys, investigators and senior
19 executives) conducting, assisting, monitoring, reviewing, or making
20 determinations with regard or related to the Action, and FDIC-R's counsel
21 who have signed this SPO;

22 (b) Outside counsel (together with any employees of
23 counsel) who have not otherwise signed this SPO, engaged by the FDIC-R
24 to assist or participate in the above matters;

25 (c) Vendors, experts, consultants, mediators, and
26 arbitrators engaged by the FDIC-R or its counsel to assist or participate in
27 the above matters;
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1 (d) Auditors or examiners required or authorized by
2 law to review materials that may include Confidential Material;

3 (e) Persons to whom the information is required to be
4 made available under the FOIA or the FDIC-R's FOIA regulations, 12 C.F.R.
5 § 309.5, upon receipt of a proper FOIA request for such information;

6 (f) Court officials involved in this Action including
7 court reporters, certified translators or interpreters, and other Court
8 personnel as are necessarily incident to the conduct of discovery, the
9 preparation for the trial or the trial itself;

10 (g) Other Bank officers, directors, employees,
11 independent contractors, or outside accountants or auditors who
12 performed work for the Bank;

13 (h) Non-party witnesses who have executed
14 Attachment B, provided however, if in the course of examining said
15 witness the witness has declined to execute Attachment B, the examination
16 of said witness may proceed and the witness may be shown Confidential
17 Material, but the witness shall not be given a copy of said material.
18 Provided, however, that as to such witnesses that decline to execute
19 Attachment B, any Confidential Material to be used as exhibits shall be
20 attached in a Confidential Appendix of exhibits, separate from the balance
21 of the exhibits; and

22 (i) Any officer, director, or employee of NFID.

23 If and to the extent either party believes that Confidential
24 Material should be disclosed to any person not specifically covered within
25 the foregoing lists, or a person to whom Confidential Receivership
26 Materials may not be disclosed pursuant to paragraph 2(d) above, such
27 Party shall request that the other Party consent to the disclosure of
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1 Confidential Material to such proposed recipient. The other Party shall
2 review the request in good faith and respond to it within five (5) business
3 days. Neither Party waives its right to seek permission from the Court to
4 disclose to the proposed person in the event that the terms of the consent
5 cannot be agreed upon. In no event shall any Confidential Material be
6 disclosed to any person, by consent or by identification in the foregoing
7 lists, without such person first having executed the appropriate
8 acknowledgements and agreements required herein.

9 9. *Confidentiality Order Certificate.* Confidential Material
10 may only be disclosed to persons or entities identified in subparagraphs
11 7(c) - (d) and 8(b)-(c) after that person or entity, through an authorized
12 representative, agrees to be bound by this Agreement and signs a written
13 Agreement to Maintain Confidentiality in the form attached as **Attachment**
14 **B** unless such persons or entities dealt with the Confidential Material in the
15 ordinary course of their duties prior to February 27, 2009. The signature of
16 any representative with authority to sign on behalf of an entity is sufficient
17 to bind the entity, and all persons employed or otherwise retained by the
18 person or entity. The Parties shall keep all of their respective Agreements
19 to Maintain Confidentiality containing original signatures.

20 10. *Demands by Others for Confidential Materials.* If any
21 other person or entity demands by subpoena, other judicial process, or by
22 operation of law, production by a Party of any Confidential Material
23 produced to it by another Party, the Party receiving such demand shall
24 promptly notify the producing Party of such demand. At its option, the
25 producing Party may elect to challenge the demand and assert any
26 applicable protections. The burden and expense of such challenge shall be
27 borne solely by the producing Party. The producing Party shall notify the
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1 recipient Party and issuing court or tribunal of its challenge within such
2 time as required by law, the subpoena, or other judicial process. The
3 burden of proving that Confidential Material is entitled to protection from
4 disclosure shall lie with the Party making the claim. When such a
5 challenge is made, the Party who received the demand shall not produce
6 any Confidential Material in the absence of consent by the producing Party
7 or an order by the issuing court or tribunal compelling production.
8 Nothing in this provision or this SPO shall be interpreted as requiring any
9 Party to violate any applicable law.

10 11. *No Waiver of Objections to Use; Filing Under Seal.* The
11 Parties hereto shall not contend or assert that a Party's production of
12 Confidential Material pursuant to this SPO in any way acts as a waiver of
13 any privilege, work product doctrine, or discovery or evidentiary
14 objections by the producing Party, or otherwise entitles the receiving Party
15 to obtain or use Confidential Material in a manner contrary to this SPO. In
16 the event a Party wishes to file Confidential Material with the Court, the
17 Party wishing to file the Confidential Material shall request that it be filed
18 under seal and remain under seal until such time as the Court orders
19 otherwise, following the Procedure for Filings Under Seal contained under
20 the Local Rules of Court. Provided however, if the clerk declines to file
21 said documents under seal, the parties may do so with redactions as
22 required under the Local Rules of Court.

23 12. *Reservation of Rights.* Nothing in this SPO confers upon
24 the Parties any further right of access to documents or information not
25 provided by the other Parties. With respect to Confidential Material thus
26 produced, each Party reserves its rights under this SPO, and otherwise
27 under law.
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13. ***Return of Documents.*** Upon final resolution of the Action through the claim process, settlement, or entry of a final, non-appealable judgment governing the rights and obligations of the FDIC-R and the Defendants with respect to the Action, the persons and entities identified in subparagraphs 7(a)-(d) or 8(a)-(c) may retain copies of any Confidential Material produced to them as reasonably necessary to comply with future requests for review by reinsurers, auditors and regulators, or as necessary to exercise or enforce any subrogation rights, or as necessary to meet other business requirements. When such retention is no longer needed, such persons and entities shall return the retained documents or destroy those documents in accordance with their standard record destruction procedures, subject to any applicable litigation hold or any other document or information hold imposed by any governmental body or court order. Any person or entity retaining such Confidential Material shall maintain its confidentiality in accordance with this Agreement until such documents are returned or destroyed. This paragraph does not apply to any documents or information ordered produced by a court without the limitations set forth in this Agreement. The Parties further agree that all documents generated by them that summarize or otherwise include Confidential Material are governed by this SPO. To the extent any Party retains any Confidential Material pursuant to a separate written agreement, the terms of this SPO will continue to govern. Upon request by the producing Party, the receiving Party will provide appropriate certificates with respect to disposition of the Confidential Materials.

14. ***Remedies.*** To enforce rights under this SPO, or in the event of an alleged violation of this SPO, the Parties shall first seek to resolve the alleged violation through prompt and reasonable discussion. In

1 the event such efforts fail to promptly resolve the alleged violation, the
2 Parties reserve the right to initiate litigation in the Court in the Action for,
3 inter alia, money damages, injunctive relief, or any other relief as
4 appropriate.

5 15. *No Waiver of Privileges; Inadvertent Production*

6 *Procedure.* The Parties do not waive any privilege, including any attorney-
7 client privilege, work product doctrine, or any other applicable privilege
8 they might have with respect to any of the documents and information
9 produced, nor do the Parties waive the right to challenge any assertion of
10 privilege by entering into this SPO. With respect to the FDIC in any of its
11 capacities, these privileges include, but are not limited to, any privilege
12 that the Bank may have had or any federal or state regulatory agency may
13 hold. The Parties' production of Confidential Material is not intended to,
14 and shall not, waive or diminish in any way the confidentiality of such
15 material or its continued protection under the attorney-client privilege,
16 work product doctrine, or any applicable privilege as to any other third
17 party.

18 Furthermore, in the event that a Party inadvertently produces
19 attorney-client privileged documents or information, and if the Party
20 subsequently notifies the receiving Party that the privileged documents or
21 information should not have been produced, the receiving Party agrees to
22 immediately return the originals and all copies of the inadvertently
23 produced privileged documents and information. Nothing herein shall
24 prevent the FDIC-R from using any Confidential Material that it produces
25 to the Defendants in any of its capacities for any lawful purposes.
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1 In addition, with regard to privileged and/or otherwise
 2 protected documents, Federal Rule of Evidence 502 is hereby expressly
 3 incorporated into this SPO.

4 16. *Modification; Waiver.* This SPO is based on the
 5 stipulation between the Parties regarding the subject matter hereof and any
 6 prior oral or written statements concerning same are merged herein for all
 7 purposes and shall be of no force and effect. A modification or waiver of
 8 any of the terms of this SPO must be in writing and signed by all Parties, or
 9 approved by the Court after motion filed by a Party. The captions heading
 10 the paragraphs of this SPO are inserted for convenience only and shall not
 11 affect the meaning or interpretation of the provisions hereof.

12 17. *Binding Effect; Assignment.* The SPO shall be binding
 13 upon and inure to the benefit of the Parties hereto, their affiliates, their
 14 representatives, and the Parties' respective successors or assigns. No Party
 15 may assign any right or delegate any duty under this SPO other than to an
 16 affiliate without the other Party's prior written consent.

17 18. *Notice.* All notices required to be given under this SPO
 18 shall be in writing and delivered to the addressees set forth below. Notice
 19 shall be sent by overnight delivery or registered or certified mail, return
 20 receipt requested, and shall be considered delivered upon receipt.

21 If to the FDIC-R: Frank V. Langfitt, III, Esq.
 22 Ater Wynne LLP
 23 1331 NW Lovejoy Street, Ste. 900
 24 Portland, Oregon 97209

25 Robert McCoy, Esq.
 26 Morris Law Group
 27 900 Bank of America Plaza
 28 300 S. Fourth Street
 Las Vegas, Nevada 89101

And

Federal Deposit Insurance Corporation
3501 Fairfax Drive, Room VS-B-7064
Arlington, Virginia 22226-3500
Attn: _____

If to the Defendants: K. Lawson Pedigo
Miller Keffer & Pedigo PLLC
8401 N. Central Expressway, Suite 630
Dallas, Texas 75225

Carleton R. Burch
Anderson, McPharlin & Conners LLP
777 North Rainbow Boulevard, Suite 145
Las Vegas, Nevada 89107

If to Travelers: Ms. Catherine Powell
Travelers
Pro E&O Claim Unit
385 Washington Street, MC:508F
St. Paul, Minnesota 55102

19. *Power of Execution of Agreement.* Each of the signatories severally represents and warrants that he, she or it, in the capacities recited herein, has the full power and authority to execute, deliver and perform this Stipulated Protective Order.

20. *Execution; Facsimile Signatures; Counterparts.* This SPO may be executed as facsimile or scanned and e-mailed originals, and each copy of this SPO bearing the facsimile transmitted or scanned and e-mailed signature of a Party's authorized representative shall be deemed an original. This SPO may be executed in two or more counterparts, each of

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which shall be deemed an original, but all of which together shall constitute one and the same instrument.

MORRIS LAW GROUP

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Attorneys for Plaintiff Federal
Deposit Insurance Corporation as
Receiver for Security Savings Bank

Attorneys for Defendants Kelly
Jones, Stephen Dervenis, and
Thomas Procopio

ORDER

IT IS SO ORDERED.



GEORGE FOLEY, JR.

United States Magistrate Judge

DATED: March 10, 2014

ATTACHMENT A

Defendants

**Represented by K. LAWSON PEDIGO, ESQ.
and CARLETON R. BURCH, ESQ.**

Kelly Jones

Stephen Dervenis

Thomas Procopio

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ATTACHMENT B
AGREEMENT TO MAINTAIN CONFIDENTIALITY

I hereby acknowledge that I have been provided and have read a copy of that certain Stipulated Protective Order ("SPO") dated _____, 2014, in the action entitled Federal Deposit Insurance Corporation as Receiver for Security Savings Bank v. Kelly Jones; Stephen Dervenis; and Thomas Procopio, a copy of which is annexed hereto. I understand that any Confidential Material within the meaning of the SPO shown to me is confidential, shall be used by me only as provided in the SPO, and shall not be disclosed by me unless expressly permitted under the SPO. I agree to abide by the terms of the Agreement, including its provisions concerning the return or destruction of such Confidential Material. I acknowledge that I may be subject to claims for monetary damages and/or injunctive relief for unauthorized disclosure or use of Confidential Material or if I violate any obligation of this SPO.

Name: _____ Date: _____
 (signature)

Name: _____
 (printed)

Telephone: _____
 (Business)

Company: _____

 (Home)

Address 1: _____

 (Cell)

Address 2: _____

City: _____

State/Zip Code: _____

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Travelers has been provided and read a copy of that certain Stipulated Protective Order ("SPO") dated _____, 2014, in the action entitled *Federal Deposit Insurance Corporation as Receiver for Security Savings Bank v. Kelly Jones; Stephen Dervenis; and Thomas Procopio*, a copy of which is annexed hereto. Travelers understands that any Confidential Material within the meaning of the SPO shown to Travelers is confidential, shall be used by Travelers only as provided in the SPO, and shall not be disclosed by Travelers unless expressly permitted under the SPO. Travelers agrees to abide by the terms of the Agreement, including its provisions concerning the return or destruction of such Confidential Material.

State/Zip Code: _____